IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

CRL.A.No. 2115 of 2004(A)

SC.135/2004 of ADDL. SESSIONS COURT (ADHOC), THRISSUR
CP.13/2004 of JUDL. MAGISTRTE OF FIRST CLASS COURT-III, THRISSUR
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APPELLANT:

PAILY S/O.VARKEY, CONVICT NO.1265,
CENTRAL PRISON, KANNUR.

BY ADV. ADV.C.N.USHA (STATE BRIEF)

RESPONDENTS:

STATE OF KERALA.

BY PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. Koshy & T.R. Ramachandran Nair, JJ.

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Even though the deceased was removed to the Medical College Hospital immediately after he was inflicted the stab injury by the appellant, he died at 2 p.m. on 10.5.2003. The prosecution examined Pws.1 to 14 and marked Exts.P1 to P15 and Mos.1 and 2 in evidence. After a detailed discussion of the evidence adduced by the prosecution, the Additional Sessions Judge found the appellant guilty and convicted him for the offence under Section 302 I.P.C. He was awarded a sentence of imprisonment for life. It is against the said conviction and sentence, this appeal is filed by the appellant.

3. The counsel for the appellant argued that as the prosecution has failed to prove the case beyond the shadow of reasonable doubt, the accused is entitled for the benefit of doubt. The main grounds of attack are that there was undue delay in giving the First Information Statement and in registering the F.I.R., that entire chain of circumstances have not been proved to establish the guilt of the accused. It was also argued that even going by the evidence tendered by Pws.1 and 2, it could not be said that the appellant had inflicted the injury on the deceased as these witnesses have not seen him inflicting the injury. Hence, if the evidence of PWs.1 and 2 is eschewed, then there is no sufficient evidence in the case to convict the appellant, the counsel argued.

4. The incident happened admittedly in the residential house where the appellant was residing along with the deceased Scaria, his wife, PW.2, their 8 months old child and also PW.1 who is also a close relative of the deceased as well as Ashly, the daughter of the elder sister of PW.2. PW.1 is the son of the younger sister of the deceased's mother. According to his evidence, he has been residing there with the family for the purpose of studying driving by about 8 months back onwards. On the date of occurrence, the mother of the deceased had gone to the house of her elder son Babu. PW.2 was categoric that as the mother was away, Scaria was sleeping along with the accused in the middle room. PW.2 was sleeping in the room on the western side of it. At about 12.30 a.m. while he was sleeping, he heard a cry from the deceased asking him to rush and immediately he came out after opening the door. The electric light was on in the room at that time. He found the appellant coming out with the weapon after opening the door and there was blood in it. According to him, the appellant went out of the room and immediately PW.1 went inside the room. He saw Scaria sitting in the floor with the stab injury on his abdomen and was told by Scaria that the appellant stabbed him. He found Scaria in the sitting posture after placing his hands on the stomach and blood was also oozing out. PW.2 was knocking at the door on the western side which

was opened by PW.1 and she also came inside. Immediately two or three persons came, viz. Kunju, Vinod, etc. and the deceased was taken in a jeep in Medical College Hospital, Thrissur. P.W.1 also deposed that the accused was having some grudge against the deceased, as the deceased was not willing to leave the house as demanded by the accused. Further, the deceased was not allowing the accused to enjoy the property and has not been given him money to purchase medicines. Even though the appellant wanted to sell the property, Scaria was not in favour of it. According to P.W.1, this was the motive behind the incident. P.W.1 gave the F.I. Statement at 5 p.m. on 10.5.2003.

5. The evidence of P.W.1 is corroborated by the evidence of P.W.2, the wife of the deceased. She also deposed that at 12.30 a.m. she woke up hearing the cry of the deceased and found the appellant going out of the house towards eastern side with the knife which was bloodstained. The evidence of P.W.2 corroborates in material particulars the evidence of P.W.1. We find that the evidence of P.Ws.1 and 2 are sufficient to prove the case of the prosecution and the defence could not succeed in bringing out any material contradictions in their evidence. Their evidence is trustworthy and is reliable also. The trial Court was right in believing them and in accepting their evidence. It may also be mentioned here that the

argument that PWs.1 and 2 could not have seen the appellant after the incident occurred, is not correct. The parties are close relatives and have been residing together. It is clear from the evidence that the lights were on when P.Ws.1 and 2 went inside the room where deceased was lying. In fact, in the statement under Section 313 Cr.P.C. there is a clear admission that lights were on in that room. Further, it may also be mentioned herein that the defence had no specific suggestion as regards the case pleaded and as regards the chance of anybody else inflicting the stab injury on the deceased. The conduct of the appellant in immediately running out of the house in spite of the fact that his son sustained a serious injury, clearly points out the fact that the same is not a natural one on the part of the father of the injured. This circumstance will also go to support the part played by the appellant. Apart from that, there is no suggestion by the defence of anybody else entering into the house at midnight and causing the death of the deceased. The defence has no such case also.

6. The next aspect is the alleged delay in lodging the F.I. Statement. We find that the said argument also cannot be accepted. The deceased was immediately removed to the hospital and P.W.1 being a close relative, had accompanied the deceased. It is clear that the close relatives including P.Ws.1 and 2 were trying to save the deceased. The learned trial judge

rejected the argument. P.W.4, one of the brothers of the deceased, deposed that nobody thought that the victim will die. As the accused in this case is the father of the deceased, it is not unnatural to find that they would be reluctant to go to the police station immediately. Hence, the reasons stated by the trial Court to reject the said argument are well founded. Immediate concern of the relatives was to take the injured to the hospital than reporting the matter to police. We are also of the view that there is no culpable delay in lodging the F.I. statement and going by the well settled principles, the delay, if any is not material to affect the prosecution case. Counsel for the appellant argued that the delay has not been explained by the prosecution. There is no effective challenge on this aspect by the defence and hence we reject the said argument also.

7. The prosecution further relies upon the evidence of PWs.3 and 4 as well as the recovery of MO.1 knife to prove the case. PW.3 in his evidence, clearly stated that on hearing cries from the house of Scaria, the deceased, he went there running with a torch and saw the accused going towards north from the house. He found that the accused was having a knife stained with blood in his hands. He found on reaching the scene, Scaria pressing the left side of his stomach stating that his father deceived him. The deceased was taken to the hospital by P.W.3 and other persons. He also identified MO.1

as the knife carried by the accused. In cross examination, nothing has been brought out to discredit his evidence. P.W.4 is one of the brothers of the deceased. He also speaks about the dispute between the deceased and the accused and the occasional quarrels they were indulging. Even though P.W.4 stated that the deceased has spoken to him that the appellant had inflicted injury, that part of the evidence was not believed by the learned Sessions Judge also. The counsel for the appellant argued that the evidence of PWs.3 and 4 are unacceptable. We find that P.W.3 has spoken about the fact that the accused was coming out of the house and was going towards north with a bloodstained knife. He found Scaria with an injury on his stomach when he went inside the house. There are no circumstances to disbelieve his evidence.

8. Apart from the above, the recovery of MO.1 also connects the accused with the offence. The counsel for the appellant argued that there was delay on the part of P.W.12 in producing MO.1 before the Court. Due explanation has been given by P.W.12 which is acceptable. Therefore, nothing turns out on that aspect to disprove the case of the prosecution. P.W.13 deposed that deceased died due to stab injury caused to chest and abdomen. Injury No.1 as per Ext.P14 postmortem certificate is as follows:

"1. Incised wound 9x3.5 cm on the left side of chest and abdomen obliquely placed with its upper end 6.5cm outer to midline and 8cm below left nipple, and lower end 5cm outer to midline. The wound was found sutured with 8 sutures. The wound had cut the 6th costal cartilage clearly and the intercostal muscles and vessels of the 5th and 6th intercostal space. The chest cavity contained 500ml of fluid blood in the left chest cavity. Intercostal muscles were found sutured. The diaphragm was found cut at its dome (4.5cm long) sutured with 4 sutures. The wound had entered the abdominal cavity. It had pierced the stomach 3.5 cm at the fundus and perforated at the atrium (2.8 cm). Both wounds were found sutured. There was 150 ml of fluid blood in the peritoneal cavity. (The 2ound was surgically modified) The wound had a total minimum depth of 12.4cm.)"

It was vehemently argued that in view of the fact that MO.1 is having a width of 3.8 cm. in the middle, it is doubtful whether the injury sustained by the deceased would have been caused by the weapon. Reliance is placed on that part of the evidence of P.W.13 stating that if the weapon had pierced into the body upto half length of the weapon, the injury will be having the same width of the weapon or more. The learned Sessions Judge relying on

the principles stated by the Supreme Court in AIR 1988 SC 2154, AIR 1993 SC 484 and AIR 2004 SC 492, did not accept the argument. PW.13, doctor who conducted postmortem clearly deposed that injury No.1 can be caused by MO.1. It is clear from the evidence that MO.1 was recovered based on the information given by the accused. No mathematical precision can be insisted also. No sufficient materials are there to discredit the case of the prosecution.

9. It is clear from the evidence that accused was having serious difference with his son, the deceased Scaria in regard to the enjoyment of the property and the right to collect improvements. The deceased and the accused used to quarrel themselves whenever the accused was making attempt to sell the property. It is also clear from the evidence that the deceased did not allow the accused to take income from the property. The above circumstances prove clearly the motive for the crime committed by the appellant. Apart from the clear evidence of PWs.1 and 2 corroborated by evidence of PW.3 and recovery evidence, the Sessions Judge has also noted the subsequent conduct of the accused while coming to the conclusion that the accused is guilty. He did not accompany the deceased son to the hospital nor attend the funeral. The evidence clearly indicates that the incident occurred inside the room where the deceased and accused were

sleeping. In 313 statement, accused stated that he woke up hearing the cry of the deceased. There was no possibility of any outsider committing the crime, going by the clear evidence proved in the case. There was no suggestion worthwhile on the part of the defence also to discredit the prosecution case in that aspect. The chain of circumstances has been clearly established and the prosecution has succeeded in proving its case.

We find that the appeal is without any merit and hence the same is dismissed confirming the conviction and sentence awarded by the Court below.

(J.B. Koshy, Judge.)

(T.R. Ramachandran Nair, Judge.)

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J.B. Koshy & T.R. Ramachandran Nair, JJ.

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